

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/05/2001

CLERK OF THE COURT
FORM L513

HONORABLE MICHAEL D. JONES

T. Pavia
Deputy

LC 2000-002035

FILED: _____

STATE OF ARIZONA

CATHERINE E LEISCH

v.

GREG EUGENE SEARLES

THOMAS R PUKLIN

APPEALS-CCC
CHANDLER JUSTICE COURT
FINANCIAL SERVICES-CCC

APPEAL RULING

CHANDLER JUSTICE COURT

Cit. No. 98-287 OMI

Charge: COUNTY PLANNING AND ZONING VIOLATION

DOB: 09-30-42

DOC: 07-22-98

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Chandler Justice Court and Memoranda of counsel.

Appellant was charged by complaint with a zoning violation, a class 2 misdemeanor offense. Appellant requested that a court-appointed attorney be provided to him and his request was denied. Appellant was tried and found guilty on October 4, 1999. Sentencing was scheduled November 8, 1999. On that date, Appellant received a suspended sentence, was placed on supervised probation for a period of twelve months including terms 13 and 18. Term 13 required a fine of \$750.00. Term 18 required that Appellant clean up the property within 120 days of November 8, 1999. On that same date, Appellant was ordered to appear at a review hearing on March 8, 2000 to show proof that he had cleaned up the property or that he would be imprisoned. Thereafter, Appellant was ordered to appear May 8, 2000 at 9:00 a.m. to show proof of clean up of property (in an Order dated April 10, 2000). Apparently, Appellant failed to appear May 8, 2000 and a warrant was issued for his arrest for failing to appear and contempt. The docket from the Chandler Justice Court reflects that the warrant was later quashed. Appellant appeared August 31, 2000 explaining that he had been ill and in the hospital. At that time, the Court reset the case for re-sentencing. Appellant was sentenced to serve 120 days jail September 18, 2000, such sentence to begin September 22, at 6:00 p.m. It does not appear that a Petition to Revoke Probation had been filed by any person. No other explanation appears in the Court record why the Appellant was resentenced August 31, 2000. The Lower Court granted Appellant's Motion to Stay the jail sentence pending appeal and Appellant filed a timely notice of appeal.

Both parties have addressed the issue of right of an indigent defendant to court-appointed counsel. Both counsel have submitted excellent memoranda concerning that issue. However, this Court views the issue somewhat differently. The

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first issue which appears to this Court concerns the propriety of the trial judge in resentencing Appellant on September 18, 2000. On that date, the trial judge ordered that Appellant would serve 120 days in jail. This order was not part of the sentence which was imposed on November 8, 1999. For the reason that no jail was originally imposed, Appellant was not entitled to court-appointed counsel pursuant to Rule 6.1(b), Arizona Rules of Criminal Procedure.

As previously noted, the record does not support an inference or conclusion that a petition to revoke Appellant's probation had been filed. In the absence of such a petition to revoke or modify probation, the trial court had no authority to change the original sentence imposed.

This Court concludes that the trial court was without authority to impose a jail sentence on September 18, 2000 having failed to originally impose a jail sentence (and to suspend all or a portion of that jail sentence). This case would be entirely different if either a petition to revoke probation had been filed or if the trial judge had originally ordered a jail sentence and then suspended a portion of the jail sentence contingent upon clean up of the property by the Appellant.

IT IS THEREFORE ORDERED reversing the trial court's sentence of September 18, 2000 including 120 days jail sentence.

IT IS ORDERED that Appellant's probationary term of 12 months expired November 7, 2000.

IT IS ORDERED discharging Appellant from probation.

IT IS ORDERED refunding \$1,000.00 Appeal Bond posted by Appellant.

IT IS ORDERED that the Clerk of this Court or the Clerk of the Chandler Justice Court shall refund that Bond to Appellant.